

SUBCHAPTER III. CRIMINAL PROCESS.

Article 17.

Criminal Process.

§ 15A-301. Criminal process generally.

(a) Formal Requirements. –

- (1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk in either paper form or in electronic form in the Electronic Repository as provided in G.S. 15A-301.1.
- (2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

(b) To Whom Directed. – Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(b1) **(For effective date, see note)** Approval by District Attorney; school personnel. – Notwithstanding any other provision of law, no warrant for arrest, order for arrest, criminal summons, or other criminal process shall be issued by a magistrate against a school employee, as defined in G.S. 14-33(c)(6), for an offense that occurred while the school employee was in the process of discharging his or her duties of employment, without the prior written approval of the district attorney or the district attorney's designee. For purposes of this subsection, the term "district attorney" means the person elected to the office of district attorney. This subsection does not apply if the offense is a traffic offense or if the offense occurred in the presence of a sworn law enforcement officer. The district attorney may decline to accept the authority set forth in this subsection; in such case, the procedure and review authority shall be as set forth in subsection (b2) of this section.

(b2) **(For effective date, see note)** Magistrate review; school personnel. – A district attorney may decline the authority provided under subsection (b1) of this section by transmitting a letter so indicating to the chief district court judge. Upon receipt of a letter from the district attorney declining the authority provided in subsection (b1) of this section, the chief district court judge shall appoint a magistrate or magistrates to review any application for a warrant for arrest, order for arrest, criminal summons, or other criminal process against a school employee, as defined in G.S. 14-33(c)(6), where the allegation is that the school employee committed a misdemeanor offense while discharging his or her duties of employment. The failure to comply with any of the requirements in this subsection shall not affect the validity of any warrant, order, summons, or other criminal process. The following exceptions apply to the requirements in this subsection:

- (1) The offense is a traffic offense.
- (2) The offense occurred in the presence of a sworn law enforcement officer.
- (3) There is no appointed magistrate available to review the application.

(c) Service. –

- (1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving for service or execution a criminal process that was first created and exists only in paper form must note thereon the date and

time of its receipt. A law enforcement officer receiving a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall cause the date of receipt to be recorded as provided in that section. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

- (2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(d) Return. –

- (1) The officer or other employee designated as provided in subsection (b) who serves or executes a criminal process that was first created and exists only in paper form must enter the date and time of the service or execution on the process and return it to the clerk of court in the county in which issued. The officer or other employee designated as provided in subsection (b) of this section who serves or executes a copy of a criminal process that was printed in paper form as provided in G.S. 15A-301.1 shall promptly cause the date of the service or execution to be recorded as provided in that section.
- (2) If criminal process that was created and exists only in paper form is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.
 - a. Warrant for arrest – 180 days.
 - b. Order for arrest – 180 days.
 - c. Criminal summons – 90 days or the date the defendant is directed to appear, whichever is earlier.
- (3) Failure to return the process to the clerk as required by subdivision (2) of this subsection does not invalidate the process, nor does it invalidate service or execution made after the period specified in subdivision (2).
- (4) The clerk to which return of a criminal process that was created and exists only in paper form is made may redeliver the process to a law-enforcement officer or other employee designated as provided in subsection (b) for further attempts at service. If the process is a criminal summons, he may reissue it only upon endorsement of a new designated time and date of appearance.

(e) Copies to Be Made by Clerk. –

- (1) The clerk may make a certified copy of any criminal process that was created and exists only in paper form filed in his office pursuant to subsection (a) when the original process has been lost or when the process has been returned pursuant to subdivision (d)(2). The copy may be executed as effectively as the original process whether or not the original has been redelivered as provided in G.S. 15A-301(d)(4).
- (2) When criminal process is returned to the clerk pursuant to subdivision (d)(1) and it appears that the appropriate venue is in another county, the clerk must make and retain a certified copy of the process and transmit the original process to the clerk in the appropriate county.
- (3) Upon request of a defendant, the clerk must make and furnish to him without charge one copy of every criminal process filed against him.
- (4) Nothing in this section prevents the making and retention of uncertified copies of process for information purposes under G.S. 15A-401(a)(2) or for any other lawful purpose.

(f) Protection of Process Server. – An officer or other employee designated as provided in subsection (b), and serving process as provided in subsection (b), receiving under this section

or under G.S. 15A-301.1 criminal process which is complete and regular on its face may serve the process in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

(g) Recall of Process – Authority. – A criminal process that has not been served on the defendant, other than a citation, shall be recalled by a judicial official or by a person authorized to act on behalf of a judicial official as follows:

- (1) A warrant or criminal summons shall be recalled by the issuing judicial official when that official determines that probable cause did not exist for its issuance.
- (2) Any criminal process other than a warrant or criminal summons may be recalled for good cause by any judicial official of the trial division in which it was issued. Good cause includes, without limitation, the fact that:
 - a. A copy of the process has been served on the defendant.
 - b. All charges on which the process is based have been disposed.
 - c. The person named as the defendant in the process is not the person who committed the charged offense.
 - d. It has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist or have been satisfied.
- (3) The disposition of all charges on which a process is based shall effect the recall, without further action by the court, of that process and of all other outstanding process issued in connection with the charges, including all orders for arrest issued for the defendant's failure to appear to answer the charges.

When the process was first created and exists only in paper form, the recall shall promptly be communicated by any reasonable means to each law enforcement agency known to be in possession of the original or a copy of the process, and each agency shall promptly return the process to the court, unserved. When the process is in the Electronic Repository, the recall shall promptly be entered in the Electronic Repository, and no further copies of the process shall be printed in paper form. The recall shall also be communicated by any reasonable means to each agency that is known to be in possession of a copy of the process in paper form and that does not have remote electronic access to the Electronic Repository. (1868-9, c. 178, subch. 3, s. 4; Code, s. 1135; Rev., s. 3159; C.S., s. 4525; 1957, c. 346; 1969, c. 44, s. 28; 1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, ss. 136, 137; 1979, c. 725, ss. 1-3; 1989, c. 262, s. 3; 2002-64, s. 3; 2012-149, s. 5.)